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FISCAL IMPACT STATEMENT

LS 7526 **NOTE PREPARED:** Apr 9, 2009
BILL NUMBER: SB 501 **BILL AMENDED:** Apr 9, 2009

SUBJECT: Uniform commercial code revisions and economic development.

FIRST AUTHOR: Sen. Simpson **BILL STATUS:** CR Adopted - 2nd House
FIRST SPONSOR: Rep. L. Lawson

FUNDS AFFECTED: X GENERAL **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) *Small Business Loan Program*: This bill establishes the Small Business Loan Program administered by the Indiana Finance Authority (IFA). It establishes the Small Business Loan Fund. It authorizes the IFA to transfer money in the fund to financial institutions for deposit at reduced interest rates. It requires the financial institution to loan the money to approved small business development projects. It provides that the interest rate charged to the small business may not exceed the rate payable to the IFA plus 3%. It provides that the maximum amount that may be deposited for a particular small business development project is $1,000,000. It requires an annual report from the entity responsible for carrying out the duties of the Indiana economic development corporation concerning small business development.

Transfer of Various Economic Development Programs: The bill transfers administration of the micro-enterprise partnership program fund, certain responsibility for small business development, the microenterprise partnership program, and the small and minority business financial assistance program from the Indiana Economic Development Corporation to the Indiana Housing and Community Development Authority.

Uniform Commercial Code Revisions: The bill provides that a choice of laws clause in a construction or design contract is not enforceable unless the clause relates to certain provisions of the Uniform Commercial Code. It defines "record" and amends the definitions of "bank" for purposes of the Uniform Commercial Code (UCC). It amends the definition of "good faith" as it applies to certain provisions of the UCC. (It adopts the most recent revisions to the parts of the UCC concerning negotiable instruments and bank deposits and collections, including the following: (1) Provides that a person who has lost possession of an instrument but acquired ownership of the instrument directly or indirectly from a person entitled to enforce it may enforce

the lost instrument. (2) Specifies the conditions under which payment of an instrument is discharged, if the instrument has been transferred to another person. (3) Adds provisions concerning telephonically generated checks, in which a consumer authorizes a check to be issued in his or her name over the telephone to pay an obligation. (4) Adds provisions concerning the rights of principal and secondary obligors. (5) Provides that the omission of certain disclosure statements in an instrument used in a consumer transaction is not a defense against enforcement of the instrument. The bill makes conforming amendments.

Effective Date: (Amended) Upon Passage; July 1, 2009.

Explanation of State Expenditures: (Revised) *Small Business Loan Program:*

a. Indiana Finance Authority (IFA): The bill establishes the Small Business Loan Program and the Small Business Loan Fund both to be administered by the IFA. Money in the Fund would be used by the IFA to make loans under the program. The Fund is non-reverting and money in the Fund is to be used to conduct the Small Business Loan Program. The Fund consists of appropriations; gifts, grants, and donations; investment income earned on the Fund's assets; and repayments of loans from the Fund. The bill allows the IFA to use interest earned on the Fund to pay for administrative expenses of the Fund. The bill requires the IFA to annually report on its activities relative to the Program to the Governor, Budget Committee, and the General Assembly. The bill does not make an appropriation to the Fund. The April 6, 2009 state staffing report indicates that the IFA has 25 full time employees, and one vacant full time position.

b. Indiana Economic Development Corporation (IEDC): The bill requires the IEDC to review the annual report of the IFA and evaluate the effectiveness of the Small Business Loan Program. The bill requires the IEDC to submit its findings to the Governor, the Budget Committee, the IFA, and the General Assembly.

Background on Small Business Loan Program: Under the Small Business Loan Program, loans would be made to qualifying small businesses by financial institutions participating in the program. The loans would be made with money deposited in the participating financial institutions by the IFA. The loans would be for small business start up or expansion projects that propose to create new jobs in Indiana. To qualify for a loan a small business must be an independently owned and operated Indiana business that employs no more than 100 employees and has gross annual receipts not exceeding $5 M. Loan proceeds may be used by a small business to purchase real property; construct, renovate, or expand a building; purchase equipment, furniture, fixtures, or inventory; or for working capital.

The bill requires the small business to apply to, and be approved for a loan by, a participating financial institution. The financial institution must then apply to, and be approved for the deposit by, the IFA. The bill requires a participating financial institution to pay interest on the deposit to the IFA. The maximum rate that the IFA may require is equal to the 52-week U. S. Treasury bill rate effective the day of the deposit minus 1.5%. (Note: The 52-week U. S. Treasury bill rate on April 8, 2009 was approximately 0.6%. The high in 2008 was 2.58% on June 16, 2008.) The bill allows a participating financial institution to charge a maximum interest rate on a loan equal to the rate payable to the IFA on the deposit plus 3%. Thus, if the pertinent Treasury bill rate is 2.5%, the IFA could charge a maximum rate of 1% on a deposit and a participating financial institution could charge a maximum rate of 4% on loan. The maximum deposit that could be made by the IFA for a particular small business development project is $1 M.

Transfer of Various Economic Development Programs: The bill transfers administration of the Microenterprise Partnership Program Fund, certain responsibilities for small business development, the Microenterprise Partnership Program, and the Small and Minority Business Financial Assistance Program from the Indiana Economic Development Corporation (IEDC) to the Indiana Housing and Community Development Authority (IHCDA). The bill provides that after June 30, 2009 and before July 15, 2009 the IEDC shall transfer to the IHCDA all files pertaining to loans, grants or applications for loans or grants under the programs being transferred, money from the Microenterprise Fund, and loans held under the programs being transferred. Also, the bill transfers the authority for carrying out the duties under current law pertaining to small business development to the IHCDA. These duties include but are not limited to approving and administering loans from the Microenterprise Partnership Program Fund, establishing and administering the Small and Minority Business Financial Assistance Program, and administering the Microenterprise Partnership Program. The current statutes authorizing the IEDC to administer these programs would be repealed.

a. IEDC: The bill's provisions would likely have minimal impact on the IEDC. The requirement that authority must be transferred within a 15 day period may increase staff workload during the transfer period, but this is not expected to be significant. Also, transferring the specified programs to the IHCDA is not expected to decrease IEDC staff workload, as the programs being transferred are considered under-utilized by the IEDC.

b. Indiana Housing and Community Development Authority: The bill's provisions would likely increase administrative expenses for the IHCDA. However, some of the additional resources required would be provided by the programs transferred to the IHCDA. For example, under the bill, administrative expenses associated with the Microenterprise Partnership Program Fund would be paid from the fund. Any additional funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Background on Economic Development Programs:

a. Microenterprise Partnership Program: The Microenterprise Partnership Program provides grants to "microloan delivery organizations" - community-based or nonprofit programs that: (1) have developed a viable plan for providing training, access to financing, and technical assistance to microenterprises; and (2) that meet other criteria and qualifications specified for grant recipients. Grants may not exceed $25,000, and may be used by microloan delivery organizations (1) to satisfy matching requirements for federal or private grants; (2) to establish a revolving loan fund to make loans to microenterprises; (3) to establish a guaranty fund to guarantee loans made by a commercial lender to a microenterprises; and (4) to pay operating costs of the microloan delivery organization. However, no more than 10% of a grant may be used for operating costs. In addition, at least 50% of the loan money disbursed by the microloan delivery organization must be disbursed in loans not exceeding $10,000.

b. Microenterprise Partnership Program Fund: The Microenterprise Partnership Program Fund is a revolving fund that carries out the Microenterprise Partnership Program, and provides loans or guarantees under the Small and Minority Business Financial Assistance Program. The fund consists of General Assembly appropriations and loan repayments. Money in the fund at the end of a fiscal year does not revert to the General Fund. As of April 8, 2009, the fund had a balance of $10,375.

c. Small and Minority Business Financial Assistance Program: This program is funded through the Microenterprise Partnership Program Fund. The purpose of the program is to assist small and minority businesses in operation or expansion by guaranteeing loans made by approved lenders, or by making loans to these businesses from the fund.

d. Small Business Development: This includes administering the programs outlined in paragraphs a, b, and c above. Other duties include but are not limited to conducting conferences and seminars to provide entrepreneurs with access to individuals and organizations with specialized expertise, establishing a statewide network of public, private, and educational resources to assist in the organization and development of new enterprises, and operating a small business assistance center to provide small businesses with access to managerial and technical expertise and to provide assistance in resolving issues faced by small businesses.

Uniform Commercial Code Revisions: The bill makes certain technical revisions to the Uniform Commercial Code. The fiscal impact of these code revisions is minimal.

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Finance Authority; Indiana Economic Development Corporation; Indiana Housing and Community Development Authority .

Local Agencies Affected:

Information Sources: Steve Wolff, IEDC, 317-234-3997; Stephanie Reeve, IHCDA, 317-233-4474; Budget Agency Auditor's Data, April 9, 2009.

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